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Negligence - Causation - Liability Under Statute for Injury Resulting from Fire Started by Railroad Locomotive

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NEGLIGENCE—CAUSATION—LIABILITY UNDER STATUTE FOR INJURY RESULTING FROM FIRE STARTED BY RAILROAD LOCOMOTIVE—Sparks from defendant's train started a fire on defendant's right of way which spread toward plaintiff's farm. Plaintiff, in an attempt to contain the fire, plowed a fire guard along the edge of his property. While driving his tractor to a safe place after completing the last furrow, he ran over a root or limb which flew up and struck him in the eye, causing blindness. In the trial court plaintiff recovered from the railroad under an Oklahoma statute which specified that "Any railroad company operating any line in this state shall be liable for all damages sustained by fire originating from operating its road."[1] On appeal, *held,* affirmed, three judges dissenting. The fire was the proximate cause of the injury. *St. Louis-San Francisco R. Co. v. Ginn,* (Okla. 1953) 264 P. (2d) 351.

Many jurisdictions, not being satisfied with the common law requirement that railroads use ordinary care to prevent fires,[2] have enacted statutes which do not require proof of negligence, but impose liability upon the railroad upon a showing that plaintiff suffered damages resulting from a fire which either originated on a railroad right of way or was caused by railroad operations.[3] Statutes imposing this strict liability have uniformly been held constitutional.[4] Some of these statutes cover property damages only.[5] Others make the railroad liable for all damages arising from fires which it causes.[6] Courts usually adhere to the idea that contributory negligence is not a defense to liability under these statutes[7] unless it is gross negligence.[8] Most courts, as evidenced by the principal case, apply the doctrine of proximate cause to determine the railroad's liability under these statutes, but there is authority to the effect that

[1] Okla. Stat. (1951) tit. 2, §748.

[2] Louisville & N.R. Co. v. Howe, (Ky. 1952) 243 S.W. (2d) 905; Pollard v. Walton, 55 Ga. App. 353, 190 S.E. 396 (1937).

[3] Under the statute in the principal case, plaintiff need not prove negligence. Midland Valley R. Co. v. Barton, 191 Okla. 359, 129 P. (2d) 1007 (1942); Schaff v. Coyle, 121 Okla. 228, 249 P. 947 (1926). For a similar view in other states, see Nelson v. Chicago, B. & O. R. Co., 47 S.D. 228, 197 N.W. 288 (1924); Jasper v. Wabash R. Co., (Mo. App. 1929) 24 S.W. (2d) 243.

[4] Grissell v. Housatonic R. Co., 54 Conn. 447, 9 A. 137 (1886); Dickelman Mfg. Co. v. Pennsylvania R. Co., (D.C. Ohio 1929) 34 F. (2d) 70.

[5] An example is the Missouri statute: "Each railroad corporation owning or operating a railroad in this state shall be responsible in damages to every person and corporation whose property may be injured or destroyed by fire communicated directly or indirectly by locomotive engines in use upon the railroad owned or operated by such railroad corporation. . . ." 37 Mo. Stat. Ann. (1953) §537.380.

[6] An example is the Ohio statute: "Every company, or the receiver of such company, operating a railroad or a part of a railroad, is liable for all loss or damage by fires originating upon the land belonging to such company caused by operating such railroad." Ohio Rev. Code (Baldwin, 1953) §4963.37.

[7] Fraser-Patterson Lumber Co. v. Southern R. Co., (D.C. S.C. 1948) 79 F. Supp. 424; Kansas City S.R. Co. v. Harris, 105 Ark. 374, 151 S.W. 992 (1912).

[8] Union Seed Co. v. St. Louis I.M. & S. Ry. Co., 121 Ark. 585, 181 S.W. 898 (1916). For cases where statutes have created an express exception when the owner is guilty of contributory negligence, see Hubbard v. New York, N.H. & H.R. Co., 72 Conn. 24, 43 A. 550 (1899); Martin v. New York & N.E.R. Co., 62 Conn. 331, 25 A. 239 (1892).

liability attaches irrespective of a determination of proximate cause.[9] There is a distinct split among the courts on whether recovery can be made by one who is burned or injured by over-exertion in fighting a fire which threatened his home. The weight of authority seems to be with those courts that apply the usual proximate cause equation, saying that since the intervening act of the plaintiff in fighting the fire is foreseeable and probable, the causal chain is not broken and plaintiff may recover.[10] This doctrine has been extended to encompass a case where plaintiff was trying to protect the property of another.[11] The minority view, based on the often-criticized case of *Seale v. Gulf, C. & S. F. R. Co.*,[12] is that the attempt to put out the fire is in itself the proximate cause of any injury plaintiff may receive while engaged in the attempt, even though he may have acted in a reasonable manner.[13] Some majority view cases have strained the causal chain close to the breaking point.[14] The principal case is one of them. Here, while the injury undoubtedly happened because of the fire, it was of a type which might well have occurred while the plaintiff was plowing his farm on any other day. Thus, to allow recovery might seem to create liability because of a fortuitous coincidence. The customary rules of proximate cause logically dictate recovery by the plaintiff because the actions of plaintiff in protecting his home certainly are to be expected and the injury did result from the expectable acts. Of course, if one requires that the injury itself be expectable, the defendant must prevail. It is this latter view that is offered by the dissenting judges in the principal case as one reason for not allowing recovery,[15] and the same theory

[9] Thompson v. Richmond & D.R. Co., 24 S.C. 366 (1885); Fraser-Patterson Lumber Co. v. Southern R. Co., note 7 supra.

[10] Wilson v. Northern Pac. R. Co., 30 N.D. 456, 153 N.W. 429 (1915); Glanz v. Chicago, M. & St. P.R. Co., 119 Iowa 611, 93 N.W. 575 (1903). A leading case supporting this view contains the following language: "Appellant was bound to anticipate, when the fire started, that decedent would try to put it out. . . . if in so doing the fire which appellant had negligently set out spread to and ignited clothing without any want on her part of the care which an ordinarily prudent person would exercise under the circumstances, the appellant should be held to have anticipated such result probable, and to be liable therefore." Illinois Central R. Co. v. Siler, 229 Ill. 390 at 394, 82 N.E. 362 (1907).

[11] Liming v. Illinois Central R. Co., 81 Iowa 246, 47 N.W. 66 (1890).

[12] 65 Tex. 274 (1886). For a criticism of the Seale case, see 4 SHEARMAN AND REDFIELD, NEGLIGENCE, rev. ed., 1734 (1941).

[13] Pike v. Grand Trunk R. Co., (C.C. N.H. 1889) 39 F. 255; Braden v. St. Louis-San Francisco R. Co., 223 Ala. 659, 137 S. 663 (1931); Allison v. St. Louis Southwestern R. Co., (Tex. 1924) 257 S.W. 959.

[14] Other examples are Serafian v. Galveston, H. & S.A. Ry. Co., (Tex. 1897) 42 S.W. 142 (railroad not liable for injury caused by sleeping on neighbor's cold floor after house burned down); Birmingham Ry. Light & Power Co. v. Hinton, 141 Ala. 606, 37 S. 635 (1904) (railroad liable where child crawled back into burning house after being safely removed and left on veranda); Braden v. St. Louis-San Francisco R. Co., note 13 supra (railroad not liable for injury caused by plaintiff's falling off a ladder while preparing to fight fire on roof).

[15] "However, it cannot be said with equal logic that one guilty of negligence is required to anticipate that injury may occur from some unknown and unidentified force not actively concerned with or identified as being a part of the result of defendant's negligence." Principal case at 355.

is often the basis for decisions supporting the minority view.[16] The minority in the principal case also admits that the law as stated by the majority is correct, but concludes that this is not the place to apply it.[17] It appears that the dissenting judges have chosen this way to express their dissatisfaction with the far-reaching result that the principles of causation command. Nevertheless, in view of the absolute character of the statute involved, and the duty imposed on the farmer to mitigate damages by thwarting the fire,[18] the result of the principal case is perfectly consonant with good reason.

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[16] Allison v. St. Louis Southwestern R. Co., note 15 supra; Seale v. Gulf, C. & S.F.R. Co., note 13 supra.

[17] Principal case at 354.

[18] Glanz v. Chicago, M. & St. P.R. Co., note 10 supra; Illinois Central R. Co. v. Fry, 157 Tenn. 376, 8 S.W. (2d) 363 (1928).